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EVIDENCE—STATUTES—ENROLLED BILL, AS EVIDENCE.—Under a tax statute which read: "Including one-fourth of one mill for common school purposes to be levied, collected and distributed as other school money" (Oklahoma Laws 1909, ch. 38), the state authorities of Oklahoma proceeded to collect such designated tax against the property of the plaintiff company, which sought to restrain the collection, contending that the above mentioned provision had never received the sanction of the members of the legislature as disclosed by the journals of the Houses. *Held*, that the bill as enrolled must be deemed conclusive evidence of the action of the legislature. *Atchison, T. & S. F. Ry. Co. v. State* (1911), — Okla. —, 113 Pac. 921.

The Oklahoma courts have held to the common law rule in declaring that no inquiry may be made into the legislative journals but that a bill filed in the enrolled statutes as recorded in the office of the Secretary of State must be conclusive evidence of legislative action. (*Rex. v. Arundel*, Hob. 110, 80 Eng. Rep. 258). In *Field v. Clark*, 143 U. S. 649, 12 Sup. Ct. 495, 36 L. ed. 294, the Supreme Court considered the common law rule most reasonable. Justice HARLAN speaking for the court said: "The respect due to coequal and independent departments requires the judicial department to act upon that assurance." It is the reasoning of the court that the judiciary have not power to inquire into the action of the legislature. They must accept the laws as they find them in the enrolled statute books. New Jersey has declared the common law rule most reasonable from the viewpoint of public policy. In *State v. Young*, 32 N. J. L. (3 Vroom.) 29, it was held that it would expose state legislation to the hazards of error and fraud if every legislative act were at the mercy of all persons having access to the journals. See also *State v. Swift*, 10 Nev. 176, 21 Am. Rep. 721; *Ex parte Wren*, 63 Miss. 512, 56 Am. Rep. 825; *Sherman v. Story*, 30 Cal. 253, 89 Am. Dec. 93; *People v. Devlin*, 33 N. Y. 269, 88 Am. Dec. 377. However many of the state courts have not followed these cases. See *Koehler v. Hill*, 60 Iowa 543, 14 N. W. 738; *People v. McElroy*, 72 Mich. 446; note to *Field v. Clark*, 143 U. S. 649.

HOMESTEAD—DOES JOINDER OF WIFE TO RELEASE DOWER BAR HER HOMESTEAD RIGHT?—Defendants, husband and wife, mortgaged their homestead to plaintiff. The wife was named in the granting clause. Later in the instrument came this clause: "I, Harriet M. Woodbury, do hereby relinquish my right of dower in the before mentioned premises." There was no clause releasing homestead right. Plaintiff brought foreclosure proceedings and defendants moved to have the foreclosure made subject to the wife's homestead right. *Held*, the homestead right had been relinquished in spite of the lack of express release. *Perley v. Woodbury* (1911), — N. H. —, 78 Atl. 1073.

In some states the wife's homestead right is not barred unless expressly mentioned in the deed. *Redfern v. Redfern*, 38 Ill. 509. But even where this is unnecessary the usual rule seems to be that an express release of either dower or homestead amounts to a reservation of the other. The maxim "*expressio unius est exclusio alterius*" is applied. *Long v. Mostyn*, 65 Ala. 543; *Burrows v. Pickens*, 129 Ala. 648, 29 South. 694; *Tirrel v. Ken-*

ney, 137 Mass. 30. See also *Learned v. Cutler*, 18 Pick. 9. And in view of the tendency to construe such contracts in favor of the grantor this would seem to be the better rule. In the principal case the court attempts to distinguish *Tirrel v. Kenney*, supra, on the facts, arguing that the clause releasing dower was inserted from "mere excess of caution" and did not negative intent to release homestead. Unless it can be distinguished the decision would seem to be opposed to the better reasoning.

INSURANCE—INCREASE OF HAZARD.—Defendant company issued a policy to the plaintiff which provided that the policy should be void in case of increase in the hazard by any means within the control or knowledge of the insured. An unknown incendiary made an unsuccessful attempt to burn the building, but the insured did not notify the company of the attempt. A second incendiary attempt was successful. In an action on the policy, held, that the circumstances did not amount to an increase of hazard such as would vitiate the policy. *Williamsburgh City Fire Ins. Co. v. Weeks Drug Co.* (1910), — Tex. Civ. App. —, 132 S. W. 121, 133 S. W. 1097.

Increase of risk is ordinarily a question of fact for the jury, 13 AM. & ENG. ENC. LAW, 285. The increase must be a real one and of an appreciable extent and duration. *Plinsky v. Germania Ins. Co.*, 32 Fed. 47. A conspiracy to burn a building by the owners thereof has been held to be no increase, there being no actual step taken toward the actual accomplishment of the conspiracy. *Amperand Hotel Co. v. Home Ins. Co.*, 198 N. Y. 495. Again an attempt to burn an adjoining building coupled with the knowledge of the fact that the owners thereof had secretly removed the contents was held to be no increase. *Hartford Ins. Co. v. Dorroh*, — Tex. —, 133 S. W. 465. A single negligent act does not increase the risk though it actually cause the fire. *Des Moines Ice Co. v. Niagara Ins. Co.*, 99 Iowa 193, 68 N. W. 600. Negligence is one of the hazards insured against. A repetition of such negligent acts would constitute a substantial increase. *Farmers Ins. Co. v. Simmons*, 30 Pa. St. 299. It has been held that a temporary increase may suspend the policy until such risk is removed, at which time the policy again becomes effective. *Traders Ins. Co. v. Catlin*, 163 Ill. 256. This however is not the general rule. To the effect that a temporary increase in the risk entirely avoids the policy see *Kyte v. Com. Assur. Co.*, 149 Mass. 116. *Imperial Fire Ins. Co. v. Coos Co.*, 151 U. S. 452. Courts are unwilling to hold that an increase by third parties over whom the insured has no control should avoid the policy. Yet in case repeated unsuccessful attempts to burn the building were made, good faith would seem to demand that the insured give the insurer notice in order that the latter might receive a rate commensurate with the risk. Failure to so disclose would appear to be fraudulent concealment of a material fact. Concealment of incendiary attempts upon an adjoining property before the issuing of a policy was held fraudulent in *Walden v. Louisiana Ins. Co.*, 12 La. 134, 32 Am. Dec. 116; also in *North America Ins. Co. v. Throop*, 22 Mich. 146, 7 Am. Rep. 638. In the latter case however the insured concealed the previous attempts when questioned as to them.